OSCAR MINERAL GROUP #3

IBLA 84-289 Decided May 23, 1985

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease application NM 057247.

Dismissed.

1. Appeals -- Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Timely Filing

   Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

2. Accounts: Fees and Commissions -- Oil and Gas Leases: Applications: Generally

   It is proper for BLM to reject a simultaneous oil and gas lease application submitted with uncollectible filing fees. 43 CFR 3112.2-2(c) (1982) disqualifies simultaneous oil and gas lease applications submitted with uncollectible filing fees and requires payment of the debt as a condition precedent to further participation in the simultaneous leasing program.

3. Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications: Generally

   An oil and gas lease application must be rejected pursuant to 43 CFR 3112.2-1(d) (1982) where the applicant uses as its address the address of another person or entity in the business of providing assistance to those participating in the simultaneous oil and gas leasing system.

APPEARANCES: Todd S. Welch, Esq., Cheyenne, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Oscar Mineral Group #3 has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated September 28, 1983, rejecting its noncompetitive application to lease for oil and gas which had been selected with first priority for parcel NM 220 at the May 1983 simultaneous oil and gas drawing. The record discloses that the BLM decision had been sent to appellant at the address given on the face of the application and received at that address on October 8, 1983. Appellant's notice of appeal was filed with BLM on February 6, 1984.

[1] Notice of appeal must be filed within 30 days of the date the BLM decision is received. 43 CFR 4.411. Timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal. George Schultz, 81 IBLA 29 (1984); Ray Malory, 68 IBLA 189 (1982); Reg Whitson, 55 IBLA 5 (1981). The decision was received at the mailing address given by appellant on October 8, 1983. Therefore, in order for an appeal to have been timely, appellant was required to file its notice of appeal on or before November 7, 1983. The notice of appeal, filed by appellant on February 6, 1984, was unquestionably untimely. Appellant's appeal must, therefore, be dismissed.

We note, however, that if appellant had filed a notice of appeal in a timely manner, it would not have prevailed. Appellant's application lists Overthrust Mineral Corporation (Overthrust) as the filing service used by appellant. On the face of the application the same mailing address was used for appellant and Overthrust. The BLM decision states that "a report from the BLM, Wyoming State Office, disclosed that Overthrust Mineral Corp./Energy Land Lease Corp. has uncollectible remittances for the May 1983 filings totaling $18,000.00." The decision further noted that appellant listed the same address for both itself and for Overthrust. BLM rejected the application, citing the regulations, 43 CFR 3112.2-2(c) and 3112.2-1(d), as the basis for rejection.

The first cited regulation, in effect at the time of filing (43 CFR 3112.2-2(c) (1982)), provided:

> An uncollectible remittance covering the filing fee(s) shall result in disqualification of all filings covered by it. In such a case, the amount of the remittance shall be a debt due to the United States which shall be paid before the applicant is permitted to participate in any future selection.

The second cited regulation, in effect at the time of filing (43 CFR 3112.2-1(d) (1982)), provided:

> The application shall include the applicant's personal or business address. All communications relating to leasing shall be sent to that address and it shall constitute the applicant's address of record for the purpose provided in subpart 3112.4-1 of this title. The applicant shall not use the address of any other person or entity which is in the business of providing

assistance to those participating in the simultaneous oil and gas leasing system.

In its statement of reasons, appellant states, as follows:

> I am writing this letter to ask the BLM to reconsider its position and issue the lease to the first drawee, Oscar Mineral Number 3, when the moratorium is lifted. The basis for this request is that Energy Land Lease Mineral Corporation collected several thousand dollars from the members of Oscar Group for use in filing under the simultaneous lease drawings. A check for $18,000.00 was returned non-sufficient funds and the Bureau of Land Management has declared this as an uncollectible remittance. The members of Oscar Mineral Group would be willing to pay the $18,000.00 to the Bureau of Land Management if they can be assured that they will receive Parcel Number NM57247, which they are entitled to as first drawee. Energy Land Lease Corporation never gave notice to the members of Oscar Mineral Group that a non-sufficient funds check was issued to the Bureau of Land Management or that a decision letter had been issued by the BLM indicating that Oscar Mineral Number 3 would not receive this parcel.

Appellant requests that it be allowed the opportunity to pay the uncollectible remittance and awarded the parcel.

[2] In Marceann Killian, 79 IBLA 105 (1984), the Board considered a similar appeal by an applicant who had written a check for an application on an account that did not have sufficient funds to cover the check. Noting that it was the applicant's responsibility to ensure that the checks were paid, the Board held that BLM properly rejected the applications and barred the applicant from further participation in the drawing until the remittance was paid. See NFL Partnership, 82 IBLA 75 (1984).

[3] The purpose of subpart 3112.2-1(d) (1982) was explained by the Department at the time it was proposed as follows:

> Filing Service Abuses
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> Within the framework of present regulations, most applicants employ agents, commonly known as filing services, which promise to provide assistance in participating in the simultaneous oil and gas leasing system.
>
> Most filing services file their client's drawing entry cards directly with the Bureau of Land Management and use the service's address on the cards instead of the applicant's personal address. Typically, filing services rubberstamp the client's signature on the card or have the client send the cards to the filing service pre-signed.
>
> The drawing entry card is the applicant's offer to lease. Leases are issued in the name of the drawing winner upon submittal of the first year's rental within 15 days after notification. The applicant is not required to sign the lease form.

> The existing system has been abused by some filing services. Lease offers have been filed in the names of deceased persons. Drawing winners have been victimized by filing services which fail to pass on drawing results. Some services have advanced the first year's rental and obtained leases which have then been assigned without their client's knowledge. In these cases, it is believed, the assignment is often in accordance with a preexisting contract between the filing service and an oil company or middleman.
>
> The following proposed regulation changes address these abuses:
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> * * * * * * *
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> (3) The return address used on the drawing entry card would be required to be the applicant's personal or business address. A filing service's address could not be used. [Emphasis added.]

44 FR 56176 (Sept. 28, 1979).

Appellant has taken the position that the dishonored check was submitted by Overthrust Mineral Corporation and not appellant, and, therefore, appellant should now be given the opportunity to submit the required funds. Appellant had apparently contracted with Overthrust Mineral Corporation for certain services. These services apparently included the delivery of a check backed with sufficient funds. However, Overthrust Mineral Corporation is an agent of appellant, acting on behalf of appellant and not on behalf of BLM. The error committed by appellant's agent, Overthrust Mineral Corporation resulted in the disqualification of its application. The regulations addressing this event cannot be ignored by BLM or this Board. See Thomas N. Gwyn, 82 IBLA 11 (1984).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is dismissed.

R. W. Mullen
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Gail M. Frazier
Administrative Judge.